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09/539,874	03/31/2000	William M. Scott	A-6980	9239

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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 04/07/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/539,874

Applicant(s)

SCOTT ET AL.

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 4, 6, 8, 10, 12, 14, 20, 22, 24, 26, 28, 30, 32, 34, 36 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 9, 11, 13, 15-19, 21, 23, 25, 27, 29, 31, 33, 35, 37 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "1", "10", "12" and "20" have all been used to designate the cartridge (e.g., note Figs. 1 and 2). A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "78" and "76" have all been used to designate the front rod (e.g., note Fig. 4). A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "198" and "196" have both been used to designate the same plunger biasing spring (note Figs. 16 and 17). A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "10" and "20" have both been used to designate a substance containing cartridge (note, for example, line 21 on page 7, line 9 on page 8 and line 8 on page 9 of the specification). A proposed drawing correction and amendment to the specification are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
5. The drawings are objected to under 37 CFR 1.84(h)(5) because Figures 18, 19 and 22 show(s) modified forms of construction in the same view. A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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6. The drawings are objected to because: (A) due to margin limits, reference characters in the following figures have been obliterated — Fig. 1 in the upper left (between 22 and 36), Fig. 7 on the right hand side (between 150 and 156), and Fig. 16 in the upper left (between 18 and 82); (B) Fig. 20 contains two parts which should be bracketed together to indicate that they constitute a single entity; and (C) in Fig. 20, “303” fails to correspond with its description on lines 2-3 of page 23, i.e., being a sharp end. A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

7. **Applicant is required to submit proposed drawing corrections as well as corrected drawings in reply to this Office action.** However, formal correction of the noted defects may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing corrections and corrected drawings will result in the abandonment of the application.

### *Specification*

8. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract **should be in narrative form** and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims**, such as “means” and “said”, **should be avoided**. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and **should not repeat information given in the title**. It should avoid using phrases which can be implied, such as, “The disclosure concerns”, “The disclosure defined by this invention”, “The disclosure describes”, etc.

9. The abstract of the disclosure is objected to because it (A) is not in narrative form; (B) it uses the form found in patent claims, i.e., a single sentence; and (C) it repeats information given in the title. Correction is required. See MPEP § 608.01(b).

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10. The use of the trademark “VELCRO ®” (note page 12, line 26) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

11. The specification is objected to as failing to provide proper antecedent basis for the claimed terminology. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The claim terminology which lacks such antecedent basis is as follows: (A) “a drive assembly which rotates the turnbuckle”, as called for by claim 5; (B) “the retaining means for retaining a substance containing cartridge is fixed relative to the transmission housing”, as called for by claim 7; (C) “a fast rewind means comprising a turnbuckle splitting means whereby the turnbuckle longitudinally splits into two turnbuckle halves, and plunger biasing means whereby the telescoping plunger assembly may be manually compacted against the resistive force of a plurality of plunger biasing springs”, as called for by claim 9; (D) “the turnbuckle splitting means is comprised of a plurality of cam slots and cam followers in an alignment cage and in a drive hub and a plurality of clearance slots in the two turnbuckle halves”, as called for by claim 11; (E) “a braking means mechanism whereby the splitting of the turnbuckle is controlled by retarding the rotation of the turnbuckle”, as called for by claim 13; (F) “a passive backfeed circuit operates to reverse the direction of rotation of the turnbuckle for a brief time when the drive train means stops rotating the turnbuckle in the forward direction by reversing the direction of the internal motor for a brief time when the motor is turned off after rotating the turnbuckle in the forward direction”, as called for by claims 16 and 17; (G) “an active backfeed circuit operates to reverse the direction of rotation of the turnbuckle for a brief time when the drive train means stops rotating the turnbuckle in the forward direction by reversing the direction of the internal motor for a brief time when the motor is turned off after rotating the turnbuckle in the forward direction”, as called for by claims 18 and 19; (H) “a guide mount which is adapted to

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receive a detachable, snap fitting joist guide”, as called for by claim 21; **(I)** “a guide mount which is adapted to receive a detachable, snap fitting seam guide”, as called for by claim 23; **(J)** “a guide mount which is adapted to receive a detachable, snap fitting adjustable guide”, as called for by claim 25; **(K)** “a detachably mountable joist guide”, as called for by claim 27; **(L)** “arms extending downwardly from either side of said body”, as called for by claim 27; **(M)** “a detachably mountable seam guide”, as called for by claim 29; **(N)** “seam guide comprising a body”, as called for by claim 29; **(O)** “a detachably mountable adjustable guide”, as called for by claim 31; and **(P)** “said gears having a plurality of teeth which intermesh with the teeth on the other gear”, as called for by claim 31. Correction is required.

12. The disclosure is objected to because of the following informalities: **(A)** on page 3, in the paragraph beginning on line 8, “a telescoping plunger assembly made up of a plurality of interconnecting members” has been described, however, the description beginning on line 20 of page 7 fails to describe what structure constitutes such interconnecting members; **(B)** on page 3, in the paragraph beginning on line 8, “a base to which at least one of the interconnecting members is fixed”, however, the description beginning on line 20 of page 7 fails to describe what structure constitutes such a base; **(C)** on page 4, in the paragraph beginning on line 18, “the telescoping plunger assembly consists of a plurality of threaded, at least partially hollowed out, members” has been described, however, the description beginning on line 20 of page 7 fails to describe what structure constitutes such threaded, partially hollowed out, members; and **(D)** on page 4, in the paragraph beginning on line 18, “a frontmost member, a rearmost member and at least one intervening member wherein at least one of the intervening members is a turnbuckle” has been described, however, the description beginning on line 20 of page 7 fails to describe what structure constitutes such a frontmost member, a rearmost member and intervening members wherein at least one of the intervening members is a turnbuckle. Appropriate correction is required.

13. The following informalities in the specification are noted: **(A)** page 8 is inconsistent in referring to cap 22, i.e., line 10 refers to “retaining cap 22” whereas line 16 refers to “end cap

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22”; (B) page 8 is also inconsistent in referring to “36”, i.e., line 16 refers to “upper region 36” whereas lines 17 and 18-19 refer to “upper region of end 36”; (C) on page 8, lines 17-18, “curve” should read --curvature--; (D) on page 8, lines 17 and 18, --the-- should be inserted after “over”; (E) on page 9, lines 4 and 6, “38” should read --12--; (F) on page 9, line 15, “grooves fig. 11, 62, 64” should read --grooves 62, 64 as shown in figure 11--; (G) on page 9, line 18, “56” should read --56, seen in figures 16 and 17,--; (H) on page 10, line 2, --as shown in figure 21-- should be inserted after “hands” and before the period; (I) on page 10, line 7, --is-- should be inserted after “which”; (J) on page 10, line 18, “end 86” should read --opening 86--; (K) page 11 is inconsistent in referring to “100”, i.e., line 6 refers to “the inner bored surface 100” whereas lines 12, 18 and 21 refer to “bore 100”; (L) page 11 is also inconsistent in referring to “112”, i.e., line 9 refers to “the inner hollowed surface 112” whereas lines 13, 14, 19 and 24 refer to “the hollow 112”; (M) on page 11, line 15, --the-- should be inserted after “that”; (N) on page 12, lines 1-3, --the-- should be inserted before “telescoping”; (O) pages 12-13 are inconsistent in referring to “126”, i.e., line 8 on page 12 and line 24 on page 13 refer to “output gear 126” whereas lines 1 and 5-6 on page 13 refer to “final gear 126”; (P) on page 13, line 25, the comma directly after “118” should be deleted; (Q) on page 14, line 11, “turnbuckle splitting means mechanism 190” is confusing since no apparent mechanism or device for effecting the split or separating of the turnbuckle has been described in the paragraph bridging pages 14-15 — it is suggested that “a split turnbuckle” be used instead; (R) on page 14, line 14, a period should be inserted directly after “expand”; (S) on page 14, line 19, --the-- should be inserted after “on”; (T) on page 16, line 16, a comma should be inserted directly after “262”; (U) on page 16, line 17, a comma should be inserted directly after “264”; (V) page 16 is inconsistent in referring to “248” and “250”, i.e., line 6 refers to “cam follower pins 248 and 250” whereas line 25 and lines 3 and 27 on page 17 refer to “cam followers 250, 248”; (W) on page 17, line 18, a comma should be inserted directly after “262”; (X) on page 17, line 19, a comma should be inserted directly after “264”; (Y) on page 20, line 23, “device 1” should read --device--; and (Z) on page 23, line 26, --the-- should be inserted after “at” (second occurrence). Appropriate correction is required.

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14. The following informalities in the claims are noted: (A) in claim 3, on line 3, --wherein-- should be inserted after “member”; (B) in claim 3, on line 3, “at least one of the intervening members” should read --said at least one intervening member--; and (C) in claim 3, on line 4, --said-- should be inserted before “drive”. Appropriate correction is required.

#### *Election/Restrictions*

15. Claims 4, 6, 8, 10, 12, 14, 20, 26, 22, 28, 24, 30, 32, 34, 36 and 38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 11.

#### *Claim Rejections - 35 USC § 112*

16. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

17. Claim 33 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for “receiving slots 304 and 306 may be at any convenient angle but in Figure 20, receiving slot 304 is angled at approximately forty-five degrees to guillotine blade 312 and receiving slot 306 is angled at approximately ninety degrees to guillotine blade 312” (note lines 18-21 on page 22), does not reasonably provide enablement for “a chopping slot which intersects with said receiving slot at a fixed angle between forty-five and ninety degrees”, as called for by the claim. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

18. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.



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19. Claims 3, 5, 7, 9, 11, 13, 15-19, 21, 23, 25, 27, 29, 31, 33, 35, 37 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

20. Claim 3 recites the limitation “the intervening members” in line 3. There is insufficient antecedent basis for this limitation in the claim.

21. Claim 27 is indefinite since it fails to recite how its “joist guide” is related to the “detachable, snap fitting joist guide” called for by claim 21, from which claim 27 depends.

22. Claim 29 is indefinite since it fails to recite how its “seam guide” is related to the “detachable, snap fitting seam guide” called for by claim 23, from which claim 29 depends.

23. Claim 31 is indefinite since it fails to recite how its “adjustable guide” is related to the “detachable, snap fitting adjustable guide” called for by claim 25, from which claim 31 depends.

### *Claim Rejections - 35 USC § 102*

24. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

25. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Ratzky. Ratzky discloses a device for dispensing substance from a cartridge having all the claimed features including a retaining means (constituted by cylindrical holder 1) for retaining a substance containing cartridge (note lines 2-4 in col. 2), a telescoping plunger assembly (constituted by piston 4 and telescopic spindle 5) made up of a plurality of interconnecting members 5a, 5c and 5d, a base (constituted by housing 2) to which at least one of said interconnecting members 5a is fixed (note Fig. 1), and a drive train means (constituted by drive shaft 20 and spur wheel 21) for driving the telescoping plunger assembly 5 (note lines 7-11 in

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col. 5). With respect to claim 2, Ratzky also disclose that the telescoping plunger assembly 5 consists of threaded (note lines 53-55 in col. 1), at least partially hollowed out (note Fig. 1), members 5a, 5c and 5d each of which can be withdrawn into or upon an adjacent member when one of the members is rotated (note lines 57-60 in col. 1 and from line 65 in col. 1 to line 1 in col. 2).

***Claim Rejections - 35 USC § 103***

26. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

27. Claims 3, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratzky. With respect to claim 3, Ratzky discloses that the turnbuckle (constituted by the rearmost member 5a) is disposed at the rear of the device (note Fig. 1). To use the intervening member as the turnbuckle in Ratsky is considered to be an obvious matter of choice in design to the artisan skilled in the substance dispensing art especially when a central positioning of the drive means would provide better balancing of the device and make the device easier to use with one hand. With respect to claim 5, Ratzky further discloses that the drive train means is powered by an internal motor connected to a drive assembly which rotates the member forming the turnbuckle (note lines 3-6 in col. 5). With regard to claim 7, Ratsky also discloses that one threaded spindle section does not rotate along with the other threaded spindle sections (note lines 62-64 in col. 1) and that the retaining means is fixed relative to the transmission housing 2 (note lines 30-31 in col. 4). With regard to claims 18 and 19, Ratzky discloses an active backfeed circuit, constituted by the same switch device which causes the movement of the piston between the fully extended and fully retracted positions (note from line 65 in col. 1 to line 1 in col. 2), to reverse the direction of rotation when needed.

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28. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratzky in view of Namdari et al. Although Ratzky fails to disclose a passive backfeed circuit, attention is directed to Namdari et al. who disclose another motorized dispensing device having passive backfeed circuitry whereby motor rotation is momentarily reversed after motor stoppage so that unwanted substance extrusion is prevented when extrusion is suddenly stopped (note lines 60-64 in col. 1). It would have been obvious to one of ordinary skill in the motorized dispensing art, at the time the invention was made, to provide Ratzky with a passive backfeed circuit in which motor rotation is momentarily reversed after motor stoppage in view of the teachings of Namdari et al. in order to prevent substance extrusion when the substance extrusion is suddenly stopped.

#### *Allowable Subject Matter*

29. Claims 9, 11, 13, 15, 21, 23, 25, 27, 29, 31, 33, 35, 37 and 39 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first and second paragraphs, set forth in this Office action and if claim 9 is rewritten to include all of the limitations of the base claim and any intervening claims.

#### *Conclusion*


30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McCarthy, Hata et al. and Brueckner et al. are cited to show dispensing devices having telescoping plunger assemblies.

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.


32. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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33. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kathleen J. Prunner

March 30, 2004

  
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